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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225315
Party	Plaintiff Delta Faucet Company
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Date	03/10/2016
Attachments	Reply in Support of Motion to Consolidate.pdf(1857096 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DELTA FAUCET COMPANY,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91/225315
	)	Serial No. 86/720965
AS IP HOLDCO, LLC,	)	Mark: DXV LYNDON
	)	
Applicant.	)	

**OPPOSER'S REPLY IN SUPPORT OF MOTION TO  
CONSOLIDATE PENDING INTER PARTES PROCEEDINGS  
and STAY DISCOVERY AND BRIEF IN SUPPORT**

Opposer Delta Faucet Company ("Opposer" or "Delta") has requested the Board consolidate this Opposition No. 91/225315 (the "Opposition") with and into pending Cancellation No. 92/061540 (the "Cancellation") for the purposes of judicial economy in the consolidated discovery and trial proceedings. Applicant AS IP Holdco, LLC ("Applicant" or "AS") responded to the Motion to Consolidate on February 22, 2016. This Reply is filed in accordance with 37 CFR § 2.119(c) and 502.02(b) TMAP. This Opposition was filed on December 11, 2015, and the Cancellation was filed on May 21, 2015. Delta believes these actions should be consolidated, so that all common issues arising in the two cases may be efficiently and judiciously resolved.

**STATEMENT OF UNDISPUTED FACT**

Applicant has grossly misstated the true background in the Cancellation matter in an apparent attempt to divert attention from its own refusal to act in good faith and in accordance with the agreement of the parties. Indeed, Applicant has been uncooperative and unaccommodating since the onset of the Cancellation matter. The undisputed facts

reveal that Delta acted in good faith to accommodate Applicant's requests for extensions of time in an effort to amicably conduct discovery and prepare the Cancellation matter for trial. Delta consented to Applicant's Motion for an Extension of Answer or Discovery or Trial Periods on or about June 18, 2015. (Love Declaration ¶ 4). Delta served Applicant with Petitioner's First Set of Interrogatories to Respondent and Petitioner's First Set of Requests for Production of Documents to Respondent (collectively the "Discovery") on September 16, 2015 in the Cancellation matter. (Love Declaration ¶ 6). Delta again accommodated Applicant's extension requests, and granted an extension on October 8, 2015. The parties agreed that Applicant's Discovery responses would be due on or before November 20, 2015. (Love Declaration ¶ 7). Applicant stayed the entire Cancellation matter two days prior to the agreed upon response date to Delta's Discovery when it filed its Motion to Amend its Answer and Stay Discovery on November 18, 2015. (Exhibit A Respondent's Motion to Amend, Certificate of Service). Applicant argued that the proceedings should be suspended in their entirety, including discovery responses, "in the interests of justice as well as judicial economy". (Exhibit B Respondent's Motion to Amend pp. 4-6). Further, Applicant specifically pled that "In the interests of justice as well as judicial economy, Respondent requests that proceedings be suspended or discovery and trial dates reset *and that discovery responses to pending discovery requests served by both Petitioner and Respondent be stayed, pending the Board's decision on this motion.*" (Emphasis added). (Exhibit B Respondent's Motion to Amend pp. 4-6). Applicant specifically requested that the Board stay *all proceedings*.

including discovery and Delta consented to the requested relief by not filing any objection.

The Cancellation matter was stayed in its entirety until the Board entered its initial Order on January 15, 2016. (Exhibit C Board's Order). The Board subsequently issued a Corrected Order on January 25, 2016. The Board granted Applicant's Motion to Amend, and ordered Applicant to serve responses to Delta's Discovery on or before February 15, 2016. (Exhibit D Corrected Order). The Board's Orders did not address Delta's responses to Applicant's discovery requests. Applicant failed to comply with the Board's Corrected Order, and did not serve its Discovery responses until February 16, 2016, 152 days after Applicant was served with the Discovery requests. (Exhibit E Certificate of Service dated February 16, 2016).

Applicant's statement of facts in its Response is both disingenuous and entirely contrary to the course of dealings between the parties. While Applicant did in fact serve Discovery Requests on Delta in the Cancellation matter on or about November 13, 2015, this was five days prior to filing its Motion to Amend. It is undisputed, and Applicant readily admits in its Response that it sought a stay of discovery and all proceedings pending the Board's ruling on its Motion to Amend. Delta relied on the Applicant's position that discovery was stayed pending the Board's order on the Motion to Amend. The Board's Order and Corrected Order specifically addressed the new discovery and trial deadlines, and did not carve out an exception to discovery previously served on Delta. Moreover, Applicant's assertion that Delta is improperly attempting to "reopen"

discovery is a gross mischaracterization of the facts and contrary to the undisputed evidence in the Cancellation proceeding.

Further, Applicant has resorted to baseless personal attacks and name calling in an effort to deflect attention from its blatant infringement of Delta's LINDEN trademark. Applicant hides behind its own dilatory tactics while accusing Delta of "inexcusable neglect", and misstating Delta's position with respect to Applicant's "counterclaims" (Exhibit B Applicant's Response Motion pp. 4-6). Applicant mischaracterizes its "affirmative defenses" that are thinly veiled unauthorized counterclaims. Affirmative defenses assume the allegations in the complaint are true, but constitute a defense. Affirmative defenses do not negate the elements of the cause of action, but are an explanation that bars the claims. *Gwin v. Curry*, 161F.R.D. 70, 71 (N.D. Ill. 1995). Applicant's affirmative defenses in part attack the validity of Delta's trademark rights and pending application, but are not properly plead as counterclaims. Applicant's childish and baseless allegations that Delta has filed "misleading and sloppy pleadings" and allegations of inattention to detail are without merit, have no bearing on the merits of this Motion, and are a blatant attempt to deflect attention from its own course of unlawful action. While immaterial to the subject matter of this Motion, Applicant's own pleadings and discovery requests are fraught with errors, and appear to be boilerplate discovery requests and responses that reference parties and incorrect marks that are not subject to these proceedings.

Applicant has acted in bad faith, and has resorted to name calling in a veiled attempt to disguise its own bad faith actions and deficiencies. Applicant did not timely



file its responses to Delta's Discovery Requests, and served unresponsive answers that were littered with baseless objections. Applicant's responses were largely devoid of substance, and were served in violation of the Federal Rules of Civil Procedure. Applicant's Discovery responses contained boilerplate objections, and included objections and responses from prior cases with different parties, different marks and different legal issues.

Applicant has resorted to schoolyard name calling in an effort to deflect attention from its argument that its discovery responses were stayed during the pendency of the Motion to Amend, and all proceedings were stayed, but somehow Delta was required to respond to Applicant's discovery requests. Applicant's baseless accusations are without merit, and serve only as a distraction from the merits of Delta's motion, and Applicant should be estopped from now arguing that all proceedings except Delta's discovery responses were stayed during the pendency of Applicant's dilatory motion.

#### **MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE**

As Delta noted in its Motion to Consolidate, the marks involved in each of these proceedings, DXV LYNDON, LYNDON and LINDEN are sufficiently similar to induce the parties to cite their respective applications and registration in both pending matters. Based on the evidence and statements presented in this Opposition, Delta contends that the Cancellation proceeding and this Opposition proceeding do and will involve many common issues of law and fact. Delta contends that the consolidation of these proceedings will save considerable time, effort, and expense. Applicant's own Motion to Amend acknowledged that it sought "to avoid uncertainty and unnecessary motion

practice in the future and to facilitate orderly and efficient non-duplicative discovery and trial preparation". (Exhibit B Respondent's Motion to Amend pp. 4-6). Delta contends that consolidation will save considerable time, effort and expense, and will facilitate orderly and efficient non-duplicative discovery, motions practice and trial preparation.

Any prejudice or inconvenience resulting from consolidation will be negligible as the two proceedings have only recently entered the discovery stage. Applicant's assertion regarding "reopening" discovery are without merit, as the parties only recently commenced discovery, and the parties anticipate engaging in "robust discovery" in both proceedings. (Exhibit B Respondent's Motion to Amend pp. 4-6). Logic would dictate that discovery on all issues related to the disputed marks should occur in a single proceeding, because there are common issues of fact and law. It is indisputable that the two proceedings to be consolidated involve the same parties, similar marks and common issues of fact and law. The Board should consolidate the two proceedings because the evidence presented will be material, relevant and admissible in each proceeding, and consolidation will avoid unnecessary cost and prevent delay. There is no risk that consolidation will prejudice the parties, and if consolidation is not permitted, the separate proceedings could result in the inconsistent adjudication of common factual and legal issues.

### **CONCLUSION**

For the foregoing reasons, Delta respectfully requests that the Board (1) grant its Motion to Consolidate, (2) suspend proceedings or reset discovery and trial deadlines pending the Board's decision and (3) extend the deadline to respond or stay discovery

until thirty (30) days after the Board issues its decision and resets discovery and trial deadlines accordingly.

Respectfully submitted,

DELTA FAUCET COMPANY

Dated: March 10, 2016

By:

A handwritten signature in black ink, appearing to read "M. Love", written over a horizontal line.

Mary Frances Love  
Aspire IP, LLC  
3509 Connecticut Avenue, PMB 130  
Washington, D.C. 20008  
Attorney for Opposer and Member of  
the DC Bar.



## LOVE DECLARATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DELTA FAUCET COMPANY,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91/225315
	)	Serial No. 86/720985
AS IP HOLDCO, LLC,	)	Mark: DXV LYNDON
	)	
Applicant.	)	

**2<sup>nd</sup> DECLARATION OF MARY F. LOVE, ESQ.**  
**In Support of OPPOSER'S REPLY IN**  
**SUPPORT OF ITS MOTION TO CONSOLIDATE PENDING**  
**INTER PARTES PROCEEDINGS AND STAY OF DISCOVERY**

I, Mary F. Love, declare that the following is true and correct pursuant to 28 U.S.C. § 1746:

1. I am the Trademark Group Leader at Aspire IP, attorneys for Opposer Delta Faucet Company. I am familiar with the subject matter of this Cancellation based upon my own personal knowledge and familiarity with the case files and documents.
2. This Declaration is submitted in support of Opposer's Reply In Support of Its Motion to Consolidate Pending Inter Partes Proceedings and Stay Discovery. The dates in this Declaration relate mainly to the Petition to Cancel Registration No. 4,625,940, which is the subject of Cancellation No. 92/061,540. Accordingly, AS IP Holdco, LLC is referred to as the "Respondent" or "Applicant" and Delta Faucet Company is referred to as the "Petitioner," "Opposer," or "Delta."

3. On May 21, 2015 Petitioner Delta Faucet Company filed a Petition to Cancel Respondent's Lyndon Registration No. 4,624,940. Cancellation No. 92/061,540.
4. Thereafter, with Petitioner's consent on or about June 18, 2015, Respondent obtained an extension of time to file an Answer, up to and including, July 30, 2015.
5. On August 11, 2015, Respondent filed an application for the trademark DXV LYNDON, Serial No. 86/720985.
6. On September 16, 2015, Petitioner served Discovery Requests on Respondent and sent courtesy copies via email on September 18, 2015.
7. Thereafter, on October 8, 2015, Petitioner granted Respondent an additional 30 days, until November 20, 2015 in which to respond to Petitioner's outstanding discovery requests. No further extensions were granted to Respondent, and no explanations on the lack of response were offered to Petitioner's attorney.
8. On December 11, 2015, Petitioner filed a Notice of Opposition against Application Serial No. 86/720985 for the mark DXV LYNDON, now pending as Opposition No. 91/225315.
9. On November 13, 2015, Respondent served Discovery requests on Petitioner. Those documents were sent via U.S. Mail and arrived at attorney for Petitioner's office on November 28, 2015.
10. Petitioner requested email service from Respondent or, alternatively, "courtesy copies" via email. This offer was denied on November 24, 2015. The attorney for Respondent explained, via email, that his law firm was unable to use email for service of documents because of "significant email interruptions in our office in the past."


11. On November 18, 2015, Respondent filed a Motion to Amend Its Answer And Stay Discovery. That motion was sent via U.S. Mail and arrived at attorney for Petitioner's office on November 28, 2015.
12. On January 15, 2016, the Board granted Petitioner's motion and on January 25, 2016, the Board issued a supplemental order extending the time for Respondent's discovery response to February 15, 2016. Respondent did not respond to discovery requests by February 15, 2016.
13. Petitioner's responses to Respondent's discovery requests were due on December 18, 2015. That date was stayed at the time of Respondent's Motion to Amend Its Answer. Delta now contends that all dates are stayed pending the order of the Board on Petitioner's pending Motion to Consolidate.
14. As of today, only Applicant has responded to discovery requests. Applicant mailed discovery responses on February 16, 2016, 153 days after receiving the requests. Those responses are incomplete and unresponsive.

Respectfully submitted,

DELTA FAUCET COMPANY

Dated: March 10, 2016

By:

  
Mary Frances Love  
Aspire IP, LLC  
3509 Connecticut Avenue, PMB 130,  
Washington, D.C. 20008  
Attorney for Opposer and Member of the DC  
Bar

## EXHIBIT A



**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **AMENDED ANSWER TO PETITION TO CANCEL** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: November 18, 2015



Reinaldo M. Roa

**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **AMENDED ANSWER TO PETITION TO CANCEL** was served on the person(s) listed below by First-Class Mail, postage prepaid, on the date indicated:

Mary Frances Love, Esq.  
Aspire IP, LLC  
3509 Connecticut Ave., N.W., PMB 130  
Washington, DC 20008

Tel: (202)247-7929  
E-mail: maryfran@aspireip.com

Dated: November 18, 2015



Reinaldo M. Roa

EXHIBIT B

LLC's Motion to Amend, and counsel stated that it intentionally decided not to do anything. Cathcart Decl. at ¶¶ 22-23, Exhs. D and E, respectively.

Delta Faucet Company has knowingly and intentionally refused to comply with its discovery compliance obligations. Indeed, Delta Faucet Company has wholly failed to respond to AS IP Holdco, LLC's First Set of Interrogatories, First Request for Production of Documents (not one page of documents has been produced) and First Request for Admissions. Responses were due on December 18, 2015, as admitted by Delta Faucet Company. Delta Faucet Company's Moving Brief at pg. 6. Thus, Delta Faucet Company's time to respond to discovery expired more than 60 days ago. Fed. R. Civ. P. 36(a) provides that where a party fails to respond to a Request for Admission, the request is automatically deemed admitted.

Pursuant to Fed. R. Civ. P. 6(b), made applicable by 37 CFR § 2.11(a), when seeking to reopen an expired time to take an action; TMBP § 509.01 provides:

"A party may file a motion for enlargement of the time in which an act is required or allowed to be done [citation omitted]. If the motion is filed prior to the expiration of the period as originally set or previously extended, the motion is a motion to extend and the moving party need only show good cause for the requested extension. If, however, the motion is not filed until after the expiration of the period as originally set or previously extended, the motion is a motion to reopen, and the moving party must show that its failure to act during the time allowed therefor was the result of excusable neglect". [Emphasis added.]

The analysis used in determining whether a party has shown "excusable neglect" was set forth by the Supreme Court in *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Limited v. The Seeds Corp.*, 43 U.S.P.Q.2d 1582 (TTAB 1997). These cases and their progeny hold that the excusable neglect determination takes into account several factors, but the "third" *Pioneer* factor, i.e., "the reason for the delay, including whether it was within the reasonable control of the movant" may be deemed to be the most important of the *Pioneer* factors in a particular case.

*inter partes* proceeding); cf. *Knorr-Nahrungsmittel Aktiengesellschaft v. Harland Int'l, Inc.*, 206 U.S.P.Q. 827, 833 (TTAB 1980) ("It is settled that the intentional use of the registration legend in connection with a mark that has not been registered in an attempt, actual or implied, to mislead . . . can serve to defeat the applicant's right of registration"); *Wells Fargo & Co., v. Lundeen & Assocs.*, 20 U.S.P.Q.2d 1156, 1157-58 (TTAB 1991) (TTAB held trademark misuse valid ground to oppose registration, denied motion to dismiss); *Copelands Enterprises, Inc. v. CNV, Inc.*, 945 F.2d 1563, 1566-1567 (Fed. Cir. 1991) ("improper use of a registration notice in connection with unregistered mark . . . is a ground for denying registration"). In *Copelands*, the court instructively noted that issues related to "intent" concerning trademark notice misuse were not suited for summary judgment and self-serving declarations of inadvertent use. 945 F.2d at 1567; see also *Indep. Grower's Alliance Distrib. Co. v. Zayre Corp.*, 149 U.S.P.Q. 229, 230 (TTAB 1966) (Applicant asserted an affirmative defense of "unclean hands" based on Opposer's misuse of the symbol "®" for an unregistered mark). Respondent seeks to amend its Answer to add, *inter alia*, affirmative defenses based on "unclean hands" and "equitable estoppel."

Moreover, the Board may reset/extend discovery and trial deadlines to allow for additional discovery by the parties on this and related issues. Currently, Expert Disclosures are due on November 26, 2016, and discovery is set to close on February 25, 2016.

Accordingly, attached to the Cathcart Decl. at Exhibit C is a copy of Respondent's proposed Amended Answer, redlined to show Respondent's proposed changes.

## II.

### **Proceedings should be suspended and discovery stayed pending the Board's ruling.**

In the interests of justice as well as judicial economy, Respondent requests that proceedings be suspended or discovery and trial dates reset and that discovery responses to

pending discovery requests served by both Petitioner and Respondent be stayed, pending the Board's decision on this motion. Cathcart Decl. ¶¶ 8-20.

This is particularly true since the proposed amendments to Respondent's Answer gives rise to entirely new defenses and calls into question the viability of Petitioner's Petition to Cancel on equitable and bad faith grounds. Such asserted defenses are fact intensive inquiries that will require both parties to engage in robust discovery on the issue of Petitioner's intent to deceive. Thus, to avoid uncertainty and unnecessary motion practice in the future and to facilitate orderly and efficient non-duplicative discovery and trial preparation—and in part based on Petitioner's representation that it shall also imminently oppose Respondent's companion DXV LYNDON Application No. 86/720,985 (Cathcart Decl. ¶ 18) and seek to consolidate the proceedings—this proceeding should be suspended pending the Board's decision on this motion.

37 CFR § 2.117 provides in relevant part that "proceedings may . . . be suspended, for good cause, upon motion or a stipulation of the parties approved by the Board."

Here, under the circumstances, the wise and prudent course would be to suspend proceedings pending the Board's decision on Respondent's motion to amend. *See, e.g., SDT, Inc. v. Patterson Dental Co.*, 30 U.S.P.Q.2d 1707, 1708 (TTAB 1994). In *SDT*, where a party had moved to amend pleadings, the Board noted that the "wiser" and "more cautious" practice would have been:

for [the movant] to seek an extension or suspension [as] we believe it is in both parties' interest to have the motion for leave to amend settled before the parties engage in significant discovery and trial activities. Indeed, in view of the nature of the issue raised by opposer's motion to amend, it would be unreasonable to expect either party to take discovery or offer evidence prior to the determination of the motion.

*Id.*



## EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: January 15, 2016

Cancellation No. 92061540

*Delta Faucet Company*

*v.*

*AS IP Holdco, LLC*

**Tyrone Craven, Lead Paralegal Specialist:**

On November 18, 2015, Respondent filed a motion for leave to amend its answer to the Petition to Cancel. The motion for leave is granted as conceded. See Trademark Rules 2.127(a) and 2.115; TBMP § 507.01.

Accordingly, Respondent's amended answer filed November 18, 2015 is accepted and serves as Respondent's operative pleading.

Accordingly, disclosure, discovery and trial dates are reset as follows:

Expert Disclosures Due	3/15/2016
Discovery Closes	4/14/2016
Plaintiff's Pretrial Disclosures	5/29/2016
Plaintiff's 30-day Trial Period Ends	7/13/2016
Defendant's Pretrial Disclosures	7/28/2016
Defendant's 30-day Trial Period Ends	9/11/2016
Plaintiff's Rebuttal Disclosures	9/26/2016
Plaintiff's 15-day Rebuttal Period Ends	10/26/2016

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after

completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

## EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: January 25, 2016

Cancellation No. 92061540

*Delta Faucet Company*

*v.*

*AS IP Holdco, LLC*

**Tyrone Craven, Lead Paralegal Specialist:**

It has come to the Board's attention that the January 15, 2016 order failed to address the portion of Respondent's motion, wherein Respondent requested an extension of thirty days to respond to Petitioner's outstanding discovery request. The oversight is regretted.

In view thereof, the Board's January 15, 2016 order is modified to the extent that Respondent is allowed until February 15, 2016 to respond to Petitioner's outstanding discovery request.

Disclosure, discovery and trial dates remain as set out in the January 15, 2016 order.



## EXHIBIT E

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT was mailed by First Class mail, postage prepaid, to:

Mary Frances Love, Esq.  
ASPIRE IP  
444 E PIKES PEAK AVE, SUITE 105  
COLORADO SPRINGS, CO 80903  
UNITED STATES

Dated: February 16, 2016

  
Reinaldo Roa

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT was mailed by First Class mail, postage prepaid, to:

Mary Frances Love, Esq.  
ASPIRE IP  
444 E PIKES PEAK AVE, SUITE 105  
COLORADO SPRINGS, CO 80903  
UNITED STATES


Dated: February 16, 2016

  
Reinaldo Roa

CERTIFICATE OF TRANSMISSION

I, Sherri Weisbeck-Raslich, hereby certify that a copy of the foregoing **OPPOSER'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE PENDING INTER PARTES PROCEEDINGS and STAY DISCOVERY AND BRIEF IN SUPPORT** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: March 10, 2016


By:   
Sherri Weisbeck-Raslich

CERTIFICATE OF SERVICE

I, Sherri Weisbeck-Raslich, hereby certify that a copy of the foregoing **OPPOSER'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE PENDING INTER PARTES PROCEEDINGS and STAY DISCOVERY AND BRIEF IN SUPPORT** was served on the person listed below by First-Class Mail, postage prepaid, on the date indicated:

Ralph A. Cathcart, Esq.  
LADAS & PARRY LLP  
1040 Avenue of the Americas  
New York, NY 10018-3738


Dated: March 10, 2016

By:   
Sherri Weisbeck-Raslich

CERTIFICATE OF TRANSMISSION

I, Sherri Weisbeck-Raslich, hereby certify that a copy of the foregoing **2<sup>nd</sup> DECLARATION OF MARY F. LOVE, ESQ. In Support of OPPOSER'S REPLY IN SUPPORT OF ITS MOTION TO CONSOLIDATE PENDING INTER PARTES PROCEEDINGS AND STAY OF DISCOVERY** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: March 10, 2016

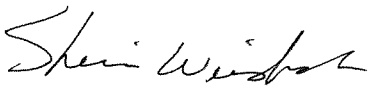
By:   
Sherri Weisbeck-Raslich

CERTIFICATE OF SERVICE

I, Sherri Weisbeck-Raslich, hereby certify that a copy of the foregoing **2<sup>nd</sup> DECLARATION OF MARY F. LOVE, ESQ. In Support of OPPOSER'S REPLY IN SUPPORT OF ITS MOTION TO CONSOLIDATE PENDING INTER PARTES PROCEEDINGS AND STAY OF DISCOVERY** was served on the person listed below by First-Class Mail, postage prepaid, on the date indicated:

Ralph A. Cathcart, Esq.  
LADAS & PARRY LLP  
1040 Avenue of the Americas  
New York, NY 10018-3738

Dated: March 10, 2016

By:   
Sherri Weisbeck-Raslich